

REMARKS/ARGUMENTS

Claims 1-14, and 16-50 are pending. Claims 5, 7-10, 12-14 and 16-50 have been allowed or indicated allowable, leaving claims 1-4, 6, and 11 at issue.

The undersigned thanks the examiner for his time and attention during telephonic interviews between the undersigned and the examiner conducted on December 14, 2004, and December 16, 2004. The following remarks are intended to summarize and amplify the substance of those interviews.

The undersigned requests that the examiner return an initialed copy of the PTO Form-1449 filed with the Supplemental Information Disclosure Statement on October 6, 2004.

Applicants respectfully traverse the rejections of claims 1, 2, and 6 as anticipated by Meltzer (US 2002/0080601) and the rejections of claims 3, 4, and 11 as obvious over Meltzer in view of Lin (US 6,454,425).

Agreement was reached during the December 14, 2004, interview that claim 1, and claims 2-8 and 11 dependent directly or indirectly thereon, would be allowable if the language of claim 1 were amended to more clearly indicate that the first recited opening, which is in communication with the ambient air and the air intake chamber, and the third recited opening, which is communication with the ambient air and the air outflow chamber, are both proximate the same end of the housing. Accordingly, claim 1 has been amended to clearly indicate that the first and third recited openings are both proximate "the one end of the housing" in order to advance the application toward final allowance. However, the undersigned maintains that the wording of claim 1 as previously presented in Amendment A already indicated that the first and third recited openings were both proximate the same end of the housing, and that the current amendment does not change the scope of claim 1.

Claim 1, and claims 2-4, 6, and 11 dependent directly or indirectly thereon, recite a flameless candle, comprising a housing defining an enclosure and a wall positioned in the enclosure forming an air intake chamber and an air outflow chamber. At least one opening proximate one end of the housing is in communication with ambient air and the air intake chamber, at least one opening is in communication with the air intake chamber and the air

outflow chamber, and at least one opening proximate the one end of the housing is in communication with the ambient air and the air outflow chamber.

The prior art does not disclose or suggest a flameless candle as recited in claims 1-4, 6, and 11, wherein both an opening in communication with ambient air and an air intake chamber and an opening in communication with ambient air and an air outflow chamber are proximate one end of the housing.

Rather, Meltzer discloses a device for simulating an open fire including a housing having a base and a cylindrical sidewall extending upwardly from the base defining an enclosure. An air inlet 8 is located through the housing proximate the base, and an air outlet 10 is located through an opposite end of the housing. The outgoing air is used to support and oscillate flexible flame simulation members 4 in order to simulate the appearance of an open flame.

Lin discloses a candle-simulating device including a housing having a cylindrical sidewall and defining a chamber therein. A blower located in the chamber moves air through the chamber from air inlet openings (not numbered) through the base 2 to an air outlet 41 through a top cover plate 4 opposite the base. The outgoing air is used to support and oscillate flexible flame simulation member 43 in order to simulate the appearance of an open flame.

Further, there would have been no motivation to modify Meltzer to have the air inlet and the air outlet proximate the same end because such an arrangement is likely to create problems with supporting and oscillating the flexible members 4, which would defeat the entire purpose of the device. The primary object of Meltzer (and also Lin) is to oscillate the flame simulation members using forced air in order to simulate the appearance of an open flame without actually having an open flame. Placing the air intake and air outlets proximate the same end is likely to cause excessive and/or uncontrollable air turbulence in the area of the flame simulation members, which would decrease or eliminate the efficacy of the flame simulation members to effectively simulate the appearance of an open flame.

In accordance with the examiner's instruction during the December 16, 2004, telephonic interview, the undersigned also kindly requests that the examiner consider Branchley et al. U.S. Patent Application Publication No. 2004/0246711 in the present application and that the examiner return an initialed copy of the enclosed PTO Form 1449 indicating such consideration.

The undersigned just became aware of Brenchley et al. on December 9, 2004, the date that Brenchley et al. was first published. The undersigned does not admit that Brenchley et al. is in fact prior art or material to patentability relative to the present application.

Brenchley et al. discloses a flameless candle including wax mixed with a volatile scent contained within a glass container having a single opening at a top end thereof. A cavity on an underside of the container includes a cylindrical wall that protrudes into the container and accepts an electric light therein to cause the wax to glow. The container is placed on an electric heating plate to slowly melt the wax and release the volatile scent through the opening. There is no incentive or suggestion to modify Brenchley et al. to include either an air moving device or air intake and outflow chambers.

Because no single piece of prior art discloses or suggests every recitation of any of the claims at issue, such claims are not anticipated thereby.


Further, because the prior art does not suggest an incentive for making the combinations recited in the claims at issue, it follows that claims 1-4, 6, and 11 are not rendered obvious thereby. The prior art must disclose at least a suggestion of an incentive for the claimed combination of elements in order for a *prima facie* case of obviousness to be established. *See In re Sernaker*, 217, U.S.P.Q. 1 (Fed. Cir. 1983); *Ex Parte Clapp*, 227 U.S.P.Q. at 973.

For the foregoing reasons, reconsideration and withdrawal of the rejections of the claims at issue and allowance thereof are respectfully requested.

Respectfully submitted,

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Date: December 20, 2004

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